

AGREEMENT

Lucas County Form

THIS AGREEMENT, made the 25th day of, Jan, 2005, in Toledo, Lucas County, Ohio, by and between the Board of County Commissioners, Lucas County, Ohio, hereinafter called "COUNTY" and Gerken Materials, Inc. hereinafter called the "SERVICE PROVIDER".

WITNESSETH:

WHEREAS, the COUNTY and the SERVICE PROVIDER mutually desire to contract with each other for the purpose of a price agreement for stone products for the Lucas County Engineer Road Maintenance Department and Lucas County Sanitary Engineer Department.

Now, Therefore, for and in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties to this Agreement, with intent to be legally bound, agree as follows:

ARTICLE ONE: SCOPE OF WORK

The "SERVICE PROVIDER" agrees to provide services for the Engineer Road Maintenance Department and Sanitary Engineer Department as addressed in the specifications for Asphalt.

ARTICLE TWO: SCHEDULE OF PAYMENTS

To compensate the SERVICE PROVIDER for services rendered, the COUNTY agrees to pay the SERVICE PROVIDER the unit price bid, see exhibit A. Orders will be placed on an as needed basis. There is no guarantee of a minimum purchase. Funding will be provided by the Engineer Road Maintenance Department and Sanitary Engineer Department

Invoice(s) by the SERVICE PROVIDER should be submitted to the departments as specified in the Purchase Orders.

ARTICLE THREE: TERM

The term of this Agreement shall commence January 25, 2005 through December 31, 2005.

ARTICLE FOUR: TERMINATION

This Agreement may be terminated by either party upon notice, in writing, delivered upon the other party 30 days prior to the effective date of termination. Also, this Agreement may be terminated by the County upon thirty (30) days written notice to the SERVICE PROVIDER if the SERVICE PROVIDER is in default of it's obligations hereunder and such default has not been cured or the SERVICE PROVIDER has not diligently taken action to cure

such default within ninety (90) days after the SERVICE PROVIDER'S receipt of written notice specifying such defaults.

Notwithstanding the above, the SERVICE PROVIDER shall not be relieved of liability to the COUNTY for damages sustained by the COUNTY by virtue of any breach of the Agreement by the SERVICE PROVIDER; and the COUNTY may withhold any compensation to the SERVICE PROVIDER for the purpose of set-off until such time as the amount of damages due the COUNTY from the SERVICE PROVIDER is agreed upon or otherwise determined.

ARTICLE FIVE: CONFLICT OF INTEREST

This Agreement in no way precludes, prevents, or restricts the SERVICE PROVIDER from obtaining and working under an additional contractual arrangement with other parties aside from the COUNTY, assuming that the contractual work in no way impedes the SERVICE PROVIDER'S ability to perform the services required under this Agreement. The SERVICE PROVIDER warrants and represents that at the time of entering into the Agreement it has no interest in nor shall it acquire any interest, direct or indirect, in any agreement which will conflict with or impede its ability to perform the required services under this Agreement.

ARTICLE SIX: ASSIGNMENTS

The parties expressly agree that this Agreement shall not be assigned by the SERVICE PROVIDER without the prior written approval of the COUNTY.

ARTICLE SEVEN: GOVERNING LAW

This agreement and any modifications, amendments, or alterations, shall be governed, construed, and enforced under the law of Ohio.

ARTICLE EIGHT: INTEGRATION AND MODIFICATION

This instrument embodies the entire agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representatives or agreements, either written or oral, between the parties to this Agreement. Also, this Agreement shall not be modified in any manner except by instrument, in writing, executed by the parties to this Agreement.

ARTICLE NINE: SEVERABILITY

If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent be held invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term and provision of this contract shall be valid and enforced to the fullest extent permitted by law.

ARTICLE TEN: COMPLIANCE

The SERVICE PROVIDER agrees to comply with all applicable federal, state and local laws in the conduct of work hereunder. The SERVICE PROVIDER accepts full responsibility for payment of all unemployment compensation insurance premiums, worker's compensation premiums, all income tax deductions, pension deductions, and any and all other taxes or payroll deductions required for the SERVICE PROVIDER and all employees engaged by the SERVICE PROVIDER for the performance of the work authorized by this Agreement.

ARTICLE ELEVEN: NON-DISCRIMINATION

During the performance of this Agreement, the SERVICE PROVIDER will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. The SERVICE PROVIDER will take affirmative action to ensure that employment without regard to race, color, religion, sex, national origin, ancestry, handicap, age, political belief or place of birth. Such action shall include, but is not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, layoff, or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship.

The SERVICE PROVIDER, or any person claiming through the SERVICE PROVIDER, agrees not to establish or knowingly permit any such practice or practices of discrimination or segregation in reference to anything to this Agreement, or in reference to any contractors or subcontracts of said SERVICE PROVIDER.

ARTICLE TWELVE: INDEMNIFICATION

The SERVICE PROVIDER agrees to protect, defend, indemnify and hold the COUNTY, its officers, employees and agents, free and harmless from and against any and all losses, penalties, damages, settlements, costs or liabilities of every kind and character arising out of or in connection with any acts or omission of the SERVICE PROVIDER, negligent or otherwise, and its employees, officers, agents or independent contractors. The SERVICE PROVIDER agrees to pay all damages, costs and expenses of the COUNTY in defending any action arising out of the aforementioned acts or omissions.

ARTICLE THIRTEEN: CONFIDENTIALITY

This Agreement establishes a relationship of qualified service so that the transfer of any client information necessary to the service function may be exchanged without additional signed consent.

ARTICLE FOURTEEN: RELATIONSHIP

Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership, association or joint venture with the SERVICE PROVIDER in the conduct of the provisions of this Agreement. The SERVICE PROVIDER shall at all times have the status of an independent contractor without the right or authority to impose tort, contractual or any other liability on the Board of Lucas County Commissioners.

ARTICLE FIFTEEN: JOINT PURCHASING PROGRAM CONTRACT OPPORTUNITIES

The County will permit others to participate in contracts that the County has entered into for the purchase of certain supplies, services, materials, and equipment, in accordance with ORC section 9.48. Upon contract award, others shall order directly with the SERVICE PROVIDER. All invoices must be sent directly to the ordering participants' address. Under no circumstances is the County obligated to the political subdivision's financial commitments.

ARTICLE SIXTEEN: AGREEMENT DOCUMENTS

The term "Agreement" means and includes the following:

- A. Exhibit A - SERVICE PROVIDER'S Pricing Page

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties have hereunto set their hand on this
____ Day of _____, 20____.

ATTEST:

Andrea Oherich

SERVICE PROVIDER:

Brent Gerken

Signature

Brent Gerken, Pres.

(Please Print Name & Title)

P.O. Box 607

Address

Napoleon, OH 43545

City/State/Zip

34-4478444

Tax I.D. or S.S. No.

APPROVAL AS TO FORM:

Julia Bates
Prosecuting Attorney

By:

John A. Borell
Asst. Prosecuting
Attorney

4/12/05

Date

BOARD OF COUNTY COMMISSIONERS
Commissioners
Lucas County, Ohio

Tina Skeldon Wozniak

Tina Skeldon Wozniak, President

M. B. Thurber

Margaret B. Thurber

Pete Gerken

Pete Gerken

APPROVED AS TO CONTENT:

Signature: [Signature] (insert dept rep name)

Resolution Number: 05-96

EXHIBIT A



LUCAS COUNTY OHIO

INVITATION TO BID

PRICE AGREEMENTS FOR THE PURCHASE OF ASPHALT AND LIMESTONE
PROJECT TITLE

ENGINEER, SANITARY ENGINEER, CITY OF TOLEDO,
CITY OF MAUMEE, VILLAGE OF WHITEHOUSE AND
RICHFIELD TOWNSHIP

COUNTY AGENCY

04-046P

BID NUMBER

JANUARY 6, 2005 AT 2:00 PM (local time)

DATE AND TIME OF BID OPENING

BIDDER MUST COMPLETE THE FOLLOWING:

NAME OF COMPANY OFFICIAL

Brent Gerken

OFFICIAL'S SIGNATURE

Brent Gerken, Pres

NAME OF COMPANY

Gerken Materials, Inc.

ADDRESS

9-072 U.S. 24 P.O. Box 6007

CITY, STATE, & ZIP

Napoleon, OH 43545

TELEPHONE NUMBER

419-533-2421

FAX NUMBER

419-533-6393

E-MAIL ADDRESS

bgerken@gerkenpaving.com

ASPHALTIC PRODUCTS

Estimated Total Quantity 11,679 Tons for 2005 & 2006 (Optional)

Prices should be quoted FOB County and other Entity trucks at commercial plants.

VENDORS RESPONSE:

Description of Product	Location of Plant	Est. Yearly Usage, in Tons	Unit Price Per Ton - 2005	Renewal Option - Unit Price Per Ton - 2006
State of Ohio Spec 301	*	365	\$24.75	No Bid
State of Ohio Spec 448 Intermediate Course Type 2	*	650	\$25.25	No Bid
State of Ohio Spec 448 Surface Course Type 1	*	9100	\$25.95	No Bid
Cold Mix	Sylvania or Waterville	114	\$600.00	No Bid
Mod. Bit. Cold Patch Material in accordance with City of Toledo Spec. No. 928-96		1300	No Bid	No Bid
State of Ohio Spec 448 (Use old Spec of 1996 - 412 Mix)	*	150	\$34.00	No Bid

* LOCATION OF PLANTS :

AIRPORT 861-2006

DETROIT AVE. 478-5876

SYLVANIA 842-0017

WATERVILLE 878-8796

CRUSHED LIMESTONE PRODUCTS

Estimated Total Quantity 12,360 Tons for 2005 & 2006 (Optional)

Prices should be quoted FOB County and other Entity trucks at commercial plants.

VENDORS RESPONSE:

Description of Product	Location of Plant	Est. Yearly Usage, in Tons	Unit Price Per Ton - 2005	Renewal Option - Unit Price Per Ton - 2006
State of Ohio Spec 601.05 Stone Size #1		100		
State of Ohio Spec 601.05 Stone Size #2		100		
State of Ohio Spec 601.05 Stone Size 4		310		
State of Ohio Spec 703.01 Stone Size #467				
State of Ohio Spec 703.01 Stone Size #6		800	BID	BID
State of Ohio Spec 703.01 Stone Size #67		200		
State of Ohio Spec #304		2500	No	No
State of Ohio Spec #410				
Quarry Run Material		100		
State of Ohio Spec. 703.01 Course Aggregate Stone Size #57		1500		
State of Ohio Spec. 411.02 Stabilized Crushed Aggregate		6750		